IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 190 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY H BRAHMBHATT

Versus

STATE OF GUJ

Appearance:

1. Criminal Revision Application No. 190 of 1990

MR ARUN H MEHTA for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/01/2002

ORAL JUDGEMENT

The present petitioner-original accused No.1 in criminal case No.1058/85 before the learned Metropolitan Magistrate, Court No.1 at Ahmedabad City, has preferred this revision application under section 397 read with section 401 of Criminal Procedure Code, 1973. The

present petitioner was convicted by the learned Metropolitan Magistrate for offence punishable under Sections 196, 471 and 479 of IPC and was sentenced to suffer S.I. for two years. He was directed to pay fine of Rs.500/- and in default of payment, he was required to undergo further S.I. for two months. The said judgment was pronounced by the said Court on 18.12.1989.

2. The petitioner preferred criminal appeal No.1/90 challenging the said conviction and sentence against him. The learned Addl.City Sessions Judge, court no.7, Ahmedabad City Sessions Court pronounced judgement in the said order on 5.6.1990 dismissing the said appeal and confirming the conviction and sentence recorded by the trial court against the present petitioner. Feeling aggrieved by the said judgment and order of the learned Addl.City Sessions Judge, the petitioner has preferred this revision application before this court. It has been mainly contended here that the two Courts below have committed an error in the eye of law in appreciation of evidence on record and some inadmissible evidence was taken into consideration and that the judgments and orders are illegal and erroneous and deserve to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed and the aforesaid judgment and orders of the two courts below be set aside.

3. On receiving the revision application, rule was issued and Mr B D Desai, learned APP appears on behalf of the State of Gujarat. I have heard learned Advocate Mr A H Mehta for the petitioner and Mr B D Desai, APP for the State. I have also considered the records and materials of this revision application as well as of the two courts below.

4. The facts leading to this revision application can be referred in nutshell as follows:

The petitioner and the co-accused were both serving on the Establishment of the District Court at Mehsana. A Judicial Officer, Mr A S Trivedi was transferred from Ahmedabad to Mehsana and, therefore, he wanted some information about school admission, gas connection and other information which would be required for a person transferred to a new place. Accordingly that letter was received by the petitioner and co-accused. It appears that the said two persons were transferred by an administrative order of the learned District Judge at Mehsana.

5. The petitioner and the co-accused both challenged the aforesaid transfer orders by filing Special Civil Application being Special Civil Application No.2724 and 2725 of 1983. The first was filed by the petitioner and the second by co-accused Mr Barot. It may be incidentally noted that Mr Barot, co-accused has passed away during the pendency of the aforesaid criminal proceedings before the trial court and, therefore, the case has abated against him.

6. The said petition of the present petitioner came to be heard and disposed of and ultimately it was dismissed. However, in the said matter the petitioner had produced the aforesaid letter said to have been addressed by Mr A S Trivedi for the purpose of substantiating the complaint made by the petitioner in the said Special C.A. It is noticed that there was some interpolation in the said letter and the said interpolation showed that there was some reference to a talk for collection of bribe amount on behalf of Mr A S Trivedi.

7. It appears from the record that the said Judicial Officer Mr Trivedi felt that the said interpolation was made in the letter by the present petitioner with a view to damage the reputation of Mr Trivedi and it was done with a view to get appropriate favourable order in the said Special C.A. Therefore, Mr Trivedi moved an application being Criminal Misc.Application No.503/83. It was contended in it that the said interpolation was made with the aforesaid object and, therefore, appropriate proceedings may be taken against the present petitioner. It seems that an order was passed directing the Registrar of this Court to file appropriate criminal proceeding in the appropriate Court. Accordingly, a complaint was filed and it had resulted into conviction of the petitioner as aforesaid. The said conviction was upheld in the Sessions Court as referred to hereinabove and that order is under challenge before this Court.

8. At the commencement of the argument, Mr A H Mehta, learned Advocate for the petitioner has submitted that there are concurrent findings of facts recorded by the two courts below and the powers, function and jurisdiction of this Court exercising revisional powers under section 397 read with section 401 of the Code would be naturally limited and it would not be possible for this Court to reappreciate the evidence and, therefore, if the findings of fact are not challengeable then it

would be extremely difficult for this court to hold that the conviction recorded against the petitioner is illegal. He has also contended that if the sentence awarded against the petitioner is appropriately and suitably reduced, then the real justice may be said to have been done to the present petitioner. For the said purpose, he has contended that the petitioner was in Government service and on account of the aforesaid conviction order against him, he has already been dismissed from the service and the dismissal has become effective and, therefore, he is no more in service. It is also contended that the offence has taken place long back and the petitioner has suffered a lot because of the pendency of the criminal proceedings and because of the conviction recorded by the two courts below against him. It is also contended that even his family background would also be a relevant consideration. The petitioner is shown to have only daughters to look after the petitioner after the petitioner's dismissal from the service. It is also contended that the petitioner may have been ill-advised by somebody with a view to obtain appropriate orders from this court in the aforesaid Special C.A.. In the aforesaid view of the matter, it was contended that the sentence awarded may be suitably reduced. At the same time, this revision has not been pressed on merit.

9. In above view of the matter, I have heard Mr B D Desai, learned APP for the State, who states that the quantum of punishment is discretionary jurisdiction and power of this court and the Court may pass appropriate order. Incidentally, Mr A S Trivedi, a Judicial Officer referred to hereinabove, in respect of whom the offence in question was committed the aforesaid offence, was also present when the matter was argued by Mr A H Mehta. It is noted that Mr Trivedi has already retired from the service as Judicial Officer and it is also noticed that the aforesaid writing which was the subject matter of the said criminal proceedings referring to the amount of bribe of Rs.3,000/- as per the alleged recommendation of Mr Trivedi to the said clerical staff has not come in the way of Mr Trivedi during his tenure of his long service in the judiciary. In other words, because of the said allegations in the said letter and writ petition, Mr Trivedi has no personal suffering or any loss. Mr Trivedi also agreed with the aforesaid factual aspect since he was present incidentally when the matter was argued.

10. In above view of the matter, I am of the view that when the petitioner has been dismissed from the

service on account of commission of the aforesaid offence against him and when the conviction was recorded long back and when the revision application has been heard and disposed of after a gap of more than 10 years, having regard to the facts and circumstances of the case and on the points advanced by Mr A H Mehta, learned Advocate for the petitioner for reducing the quantum of punishment, it would be in the interest of justice and in the fitness of things to reduce the quantum of punishment awarded by the trial court. Even Mr A S Trivedi present in the Court stated that the punishment could be suitably modulated.

11. It appears that the trial court has sentenced the petitioner to suffer S.I. for two years. However, considering the aforesaid facts of the case, it can be reduced to three months.

12. For the foregoing reasons, this revision application is partly allowed. The conviction of the petitioner recorded by the learned Metropolitan Magistrate and confirmed by the learned Addl. Sessions Judge for the aforesaid offence punishable under sections 196, 471 and 479 of IPC is ordered to be confirmed. However, the petitioner is ordered to suffer S.I. for three months for each of the three offences punishable under sections 196, 471 and 479 of I.P.C. Substantive sentence shall be run concurrently. The period for which the petitioner was in custody shall be set off against the aforesaid period.

Rule is made absolute to the aforesaid extent.

The petitioner shall surrender and his bail bonds are cancelled in case he does not surrender within four weeks, non-bailable warrant shall be issued against the petitioner and intimation may be given to the surety for due compliance of this order. The matter shall be placed on board on 28.2.2002. for finding out whether the order has been complied with or not.

25.1.2002 [D P Buch, J.]
msp